

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

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WRIT PETITION NO : 7075 of 1999

Between:

The Eluru Rice Millers Association, rep. by its Secretary, V.Koteshwara Rao, s/o Subbarayudu, aged 43 years, Secretary of the Peititoner, R/o Eluru.

..... PETITIONER

AND

1. The Commissioner of Land Revenue, Hyderabad.
2. The District Collector, West Godavari, Eluru.
3. The Mandal Revenue Officer, Eluru.
4. The Commissioner, Eluru Municipality, Eluru.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 1 and 3 in not finalising the proposals of assignment for granting patta in favour of the petitioner association for site admeasuring 125 sq.yards in T.S.No.1794/2 in Eluru Town, West Godavari District, is illegal, arbitrary, erroneous and also declare the resolution of the 4th Respondent No.384, Dt.27-02-1999 cancelling the earlier resolution No.285, dt.31-10-1991 wherein the 4th Respondent given consent for assignment of the above mentioned site is illegal, arbitrary, erroneous, vitiated and the same is against the principles of natural justice and violative of fundamental rights guaranteed under the Constitution of India and consequently direct the respondents 1 and 3 to assign the site admeasuring 125 sq.yards in T.S.No.1794/2 in Eluru Town in favour of the petitioner by granting patta therein on collecting market value of Rs.25,000/- as fixed and pass such other order or orders.

Counsel for the Petitioner: MR.Y.V.RAVI PRASAD

Counsel for the Respondent Nos.1 to 3: GP FOR ASSIGNMENT

Counsel for the Respondent No.4: Mr.D.SRINIVAS, SC FOR MUNICIPALITY.

The Court made the following :

ORAL ORDER

This writ petition is filed seeking a Writ of Mandamus to declare the action of the respondents 1 to 3 in not finalizing the proposals of assignment for granting patta to an extent of 125 square yards in T.S.No.1794/2 in Eluru town, West Godavari District, as illegal and arbitrary and also to declare the resolution No.384 dated 27-02-1999, as illegal and arbitrary.

The petitioner-The Eluru Rice Millers Association had made a representation to the Commissioner, Eluru Municipality on 05-07-1981 and similar representation was also made to the Mandal Revenue Officer, Eluru on 05-08-1991 requesting for assignment of land in T.S.No.1794 of Eluru. It is the case of petitioner-association that the said land is adjacent to the land owned by the petitioner-association and the said piece of land is required to construct a Kalyana Mandapam. Considering the representation of the petitioner-association, resolution No.285, dated 31-10-1991 was passed by the Municipality, Eluru. It is further stated that subsequently proposals were sent to the District Collector, who has fixed the market value of the land and referred the matter to the Government for consideration. At that stage, the municipal council again passed a further resolution No.384 dated 27-02-1999, cancelling the earlier resolution No.285 dated 31-10-1991. The Resolution No.384 dated 27-02-1999 was passed on the ground that the said piece of land is useful for construction of shopping complex by the municipality itself, and as such, earlier resolution was cancelled.

It is submitted by the learned counsel for the petitioner that the earlier resolution was passed on the application of the petitioner-association and when the proposals were pending and at the advanced stage, it is not open for the municipality to pass another resolution No.384 dated 27-02-1999 cancelling the

earlier resolution. Further, he submitted that as per Section.59 of the Andhra Pradesh Municipalities Act, 1965, the Government is the only authority to cancel or suspend the resolution passed by the municipality and the same municipal council cannot cancel its earlier resolution. Further, he submits that in any event subsequent resolution could not have been passed, without issuing notice to the petitioner and the same is also contrary to the proviso to clause © of Sub-Section 1 of Section 59 of the A.P. Municipalities Act, 1965.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that though initially on the representation given to the municipal council, earlier resolution was passed granting No Objection Certificate to assign the land to an extent of Ac.125 square yards, but, subsequently, resolution was passed in the interest of municipality, as the said piece of land is suitable for construction of shopping complex by Municipality itself so as to augment the resources to the Municipality.

Admittedly, the land in question is Government land, which vested with the municipality. Merely because “No Objection Certificate” was granted by the municipal council, as a matter of right, the petitioner-association can not seek allotment of the said piece of land. But, at the same time it is to be seen that based on the representation of the petitioner-association, initially a resolution was passed on 31-10-1991 vide resolution No.285 granting “No Objection Certificate”. As per Section 59 of the A.P. Municipalities Act,1965, the power to cancel or suspend the resolution passed by the municipal council is conferred on the Government and as per the said proviso, notice has to be given to the affected person.

In view of the provision under Section 59 of the A.P. Municipalities Act, 1965, the resolution No.384 passed on 27-02-1999 is totally without jurisdiction. Subsequent to passing of the resolution dated 31-10-1991, if the municipality feels that the said resolution is to be cancelled, it is for the said municipality to address the Government, but at the same time, it has no power to cancel the earlier resolution. In that view of the matter, the resolution No.384 dated 27-02-1999 is passed without any authority of law and contrary to Section 59 of the A.P. Municipalities Act, 1965.

Accordingly, resolution No.384 dated 27-02-1999 to the extent of this subject, is

hereby quashed. It is open for the respondents to take such steps as are expedient to retain the land in accordance with the provisions of A.P. Municipalities Act, 1965. It is also open for the respondents to consider the claim of the petitioner for allotment of the land. Except to the limited extent as stated above, no further relief can be granted in this writ petition.

Accordingly, the writ petition is allowed in part to the extent indicated above. No costs.

2nd July 2004

***TSNR**

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday the 2nd day of July Two thousand and Four.

Sd/-

ASSISTANT REGISTRAR

To

1. The Commissioner of Land Revenue, Hyderabad.
2. The District Collector, West Godavari, Eluru.
3. The Mandal Revenue Officer, Eluru.
4. The Commissioner, Eluru Municipality, Eluru.
5. 2 CCs to the Government Pleader for Assignment, High Court Bldgs., High Court of A.P., Hyderabad (O.U.T).
- 6. 2 CD copies.**